IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12380 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DILIP MANEKLAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12380 of 2002

MS JAYSHREE C BHATT for Petitioner No. 1

MS NANDINI JOSHI,AGP for Respondent No. 1-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 21/05/2003

ORAL JUDGEMENT

1. The petitioner, in this petition, has challenged the order of detention dated 25.11.2002 passed by the Commissioner of Police, Ahmedabad City, the respondent

no.2 herein. The petitioner is detained under section 3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (in short 'the Act'). In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on one prohibition case being CR no. 5034 of 2002 dated 7.7.2002 registered aginst the petitioner at Bapunagar Police Station. Besides the said prohibition case, the petitioner is also involved in two separate incidents alleged to have taken place on 21.10.2002 and 11.11.2002 as can be seen from the statements of two witnesses whose identity has not been disclosed claiming privilege under section 9(2) of the Act. Considering the above material, the detaining authority has recorded a finding that the detenu being a bootlegger within the definition of section 2(b) of the Act, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, the detention of the petitioner is necessary and, therefore, while exercising powers under section 3(1) of the Act, the order of detention has been passed.

2. The learned Counsel for the petitioner has raised many contentions while challenging the order of detention. However, it is not necessary for me to deal with each and every contention in view of the fact that the petition is required to be allowed on the ground of delay in communicating the decision on the representation submitted by the detenu. The learned Counsel submits that the detenu submitted representation to the State Government through advocate on 2.12.2002 and the same was received by the Secretary, Home Department on 4.12.2002. Even though the said representation was rejected on 5.12.2002, the same was not communicated to the petitioner immediately, but the same was communicated to the petitioner on 9.12.2002. Learned Counsel for the petitioner submitted that late communication of the decision on the representation also renders the continuous detention of the petitioner unconstitutional. My attention is invited to the decision rendered by the Supreme Court in the case of Harish Pahwa Vs. State of UP, AIR 1981 SC 1126. The Apex Court has observed as under:

> "We would exmphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and

communicated to the detenu."

3. In the instant case, no affidavit is filed on behalf of the State Government. Learned AGP Ms. Nandini Joshi fairly states that 6.12.2002 and 8.12.2002 were public holidays. However, she frankly concedes that 7.12.2002 being working Saturday, the State Government could have communicated the decision on 7.12.2002 on the representation submitted on behalf of the detenu. Having not done so in the instant case, in view of the decision rendered by the Apex Court, I have no option but to declare continued detention of the petitioner unconstitutional.

4. In the result, the petition is allowed. The impugned order of detention dated 25.11.2002 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is accordingly made absolute. Direct Service.

(Kshitij R.Vyas,J.)

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